IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 20TH OCTOBER 2006 / 28TH ASWINA 1928

WP(C).No. 5604 of 2006(P)

PETITIONER:

G. SOMANATHA PILLAI,
LEKSHMI NIVAS, MUNDAPUZHA, RANNI P.O.-689 672.

BY ADV. SRI.V.GIRI
SRI.P.C.CHACKO(PARATHANAM)
SRI.ABRAHAM GEORGE JACOB
SRI.C.MURALIKRISHNAN (PAYYANUR)

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY GENERAL EDUCATION (F) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

3. THE DISTRICT EDUCATIONAL OFFICER,
PATHANAMTHITTA.

4. G. NATARAJA PILLIA,
KOTTARATHIL HOUSE, MUNDAPUZHA, RANNI P.O.

BY GOVT.PLEADER SRI.BASANT BALAJI FOR R1 TO R3
ADV.G.JANARDHANA KURUP (SR) FOR R4
ADV. SRI.JOHN K.GEORGE
SRI.K.S.ARUN KUMAR
SRI.E.C.BINEESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & M.N.KRISHNAN, JJ.

W.P.(C).NO.5604 OF 2006 (P)

Dated this the 20th day of October, 2006

J U D G M E N T

KOSHY,J.

Doubting the correctness of the decision reported in **Mohammed kutty v. State of Kerala (2002 (2) KLT 300)** this matter was referred to Division Bench by the learned Single Judge (Justice Mr.K.M.Joseph). The question is whether legal representatives of 'an individual educational agency' of an aided private school can be treated as an 'individual educational agency' or a 'corporate educational agency'. According to the dictum in Mohammed kutty's case when a person who is entitled to run a School in his own right dies and his legal representatives continue in management, it will not become a 'corporate educational agency' but it will continue as an 'individual Educational Agency'. In Mohammed kutty's case it was observed as follows:

"A reading of Rule 1 of Chapter III would indicate that in the case of a Corporate Educational Agency, the right of Management would be vested in two or more persons jointly by a written registered agreement or vested in a Board, Association or created by a statute. Rule 2 would further make it clear that in the case of a Corporate Educational Agency, the Management of the school must be subject to the Rules approved by the Director. Rule 1 says that the right to conduct a school if vested in an individual in his own right or as the legal representative of a joint Family, the Educational Agency shall be termed as Individual Educational Agency. The usage of the term "Joint Family" in KER does not refer to the concept of "Joint Family" under the Hindu Law. In the case of the death of one of the members of the Joint Hindu Family, his right would devolve on the other members of the family by survivorship and not on the legal representatives of the deceased individual. The usage "the legal representatives of the Joint Family" under the above Rule takes in only all the legal representatives of the deceased person jointly or collectively and all the legal representatives of deceased Individual Educational Agency is termed as the Joint Family and it does not take in a Joint Hindu Family as contemplated under the Hindu Law. The term "legal representatives of the Joint Family" would apply to all the Individual Educational Agencies irrespective of the religion or community to which the Individual Educational Agency belonged. Corporate Management is a creation by agreement between the parties or a creation by a law, but not a creation by operation by law. By the death of Hamsa Haji, the character of Individual Educational Agency did not cease, but it would continue and it would be open for all the legal representatives of deceased Hamsa Haji to treat the school and the Management as common and to nominate or appoint one of the legal heirs as

> the Manager. Here, all the legal representatives had decided to treat the school as common by Exhibit R.5 (b) agreement and later all of them, except the petitioner, decided to convert the Management to a Corporate one by Exhibit R5(g) Constitution. Till Exhibit R5(g) document is approved by the competent authorities and treated it as a Corporate Educational Agency, the Management shall be deemed to be an Individual Educational Agency and the Management of the school shall be subject to the majority decision of the legal representatives as stipulated Exhibit R5 (b) agreement. It is for the legal representatives to decide whether the Management of the school should be continued as an Individual Educational Agency or be converted into a Corporate Educational Agency by agreement among them."

Rule 1 of Chapter III of the Kerala Education Rules is as follows:

> 1. **Classification of private Educational Institutions –** Private Educational Institutions may be classified into two categories viz . (i) those under individual Educational Agency and (ii) those under Corporate Educational Agency. Where the right to conduct the school is vested in an individual in his own right or as the legal representative of a joint family, the Educational Agency shall be termed 'Individual Educational Agency', and in all other cases the Educational Agency shall be termed 'Corporate Educational Agency'. Corporate Educational Agency shall include cases where the right is vested in (a) two or more persons jointly with written registered agreement (b) a Board or Society or Association or Company or institution registered under a statute or created by a statute (c) an institution of Trust and (d)

> an ecclesiastical office of any religious denomination.”

According to the learned Judge who referred the matter, once an 'individual educational agency' (not being the legal representative of a joint family) dies and if the right is devolved on more than one legal representatives, it becomes a 'corporate educational agency'. Of course the corporate agency can appoint a person as Manager for the aided School to exercise the functions under the Act, subject to approval of the Educational authorities as can be seen from Rule 2, Chapter III of the KER.

2. The management of the School is vested with the 'approved' Manager as per rules. After the death of an individual who had the right to conduct the School in his own capacity, his rights are inherited by one or more of his legal representatives. If it is not devolved on a particular individual by way of testamentary deposition or by way of personal law and is devolved on more than one person, it will become a

'corporate educational agency'. Considering the provisions mentioned in Chapter III Rule 2 of the KER, view of the learned Single Judge in Mohamed kutty's case that even after the death of an individual educational agency, when right of management devolves on more than one legal representatives, it will continue as an individual educational agency as not contemplated under the Educational Rules. The word used in Rule 1 while differentiating a joint family is the 'legal representative' and not 'legal representatives', making it clear that if there are more than one legal representatives, it will not be an individual educational agency. All educational agencies other than 'individual educational agency' are termed as a 'corporate educational agency'. We agree with the learned Single Judge who referred the matter to Division Bench.

3. Now we will refer to the facts of this case. One Gopalakrishna Pillai who was the Manager and owner of the School died in 1985 and it is the contention of the petitioner that the said Gopalakrishna Pillai executed a will. On the basis of the will the eldest male member of the family will be the

Manager. There were five sons and two daughters to Sri.Gopalakrishna Pillai. On the death of Sri.Gopalakrishna Pillai, Balakrishna Pillai eldest male member of the family was appointed as Manager. According to the petitioner it was on the strength of the will purportedly acknowledged by the children of Gopalakrishna Pillai. A civil suit for partition was filed. Validity of the will was attacked in the suit. The above suit was dismissed. But in first appeal as per Ext.R4 (a) judgment of a Single Judge of this Court the alleged Will is found to be not valid and management of the School is directed to be on the basis of the scheme to be framed in the final decree proceedings. To avoid vacuum, Balakrishna Pillai was allowed to continue as Manager till scheme is framed. The learned Judge observed as follows:

> "A preliminary decree for partition of plaint A-schedule properties is passed and plaintiffs are declared entitled to 1/7 share each in the same. Plaintiffs together will be entitled to 2/7 share in A-schedule school is left open to be decided in the final decree proceedings and until a scheme is framed, the 1st defendant will continue as Manager of the School."

The petitioner filed A.F.A.No.28/1999 before this Court and the matter is pending and the final decree proceedings is stayed. Therefore it can be seen that final decree proceedings and framing of the scheme is stalled at the instance of the petitioner. In the Appellate judgment only Balakrishna Pillai was allowed the right to run the School. Before the death of Balakrishna Pillai he filed an application to appoint petitioner as Manager. This was alleged as change of ownership. Ext.P1 was not for change of the ownership and Educational Authorities cannot transfer ownership to a single owner when ownership vested with all legal representatives of Sri.Gopalakrishna Pillai, original owner of the School. Petitioner was appointed as the Manager. He was not the eldest male member of the family to claim right of Manager even on the basis of alleged Will executed by Sri.Gopalakrishna Pillai. The contesting respondents has a case that since Balakrishna Pillai was not well, at his instance on his behalf, petitioner was appointed as the Manager by Ext.P1. But after Balakrishna Pillai's death on 16.1.2005 only the contesting respondents became aware of this arrangement. Finally

majority of the legal representatives of Gopalakrishna Pillai approached the District Educational Officer by application dated 3.4.2005 for appointing Nataraja Pillai eldest male member of the family as the Manager. His application was allowed by Ext.P4. All the 12 legal representatives of Gopalakrishna Pillai were issued notices and application for appointing Nataraja Pillai was supported by seven out of twelve persons. None of the other legal representatives also did make any objections except the petitioner. Balakrishna Pillai had no right to change the management or ownership. Even according to the will relied on by the petitioner only eldest male member of the family can be made as manager. Since the majority has nominated Nataraja Pillai, appointment of Nataraja Pillai cannot be questioned at this stage. Whether will is valid, how properties of Gopalakrishna Pillai are to be partitioned and who will be the manager etc. has to be decided finally in the pending appeal.

4. Nataraja Pillai was appointed as Manager by Ext.P4 with effect from the date of order 17.6.2005. It is affirmed by

Ext.P6 and finally by Government order Ext.P10. But in Exts.P6 and P10 order it is stated that since the application was filed on 24.3.2005, the appointment of the Manager of Nataraja Pillai was approved retrospectively with effect from 24.3.2005 and Exts.P4, P6 and P10 are challenged before this Court by the petitioner. We note that as per the decision in the first appeal the will was not accepted and an appeal is filed. Even if the will is accepted, on the terms of the will also petitioner will not become manager or the owner of the school. Even if the will is valid only the eldest male member staying in the family can act as the Manager. If 'will' is not accepted by the court, all the legal representatives will become the corporate agency and manager has to be appointed as per scheme to be framed or as per agreement as proved under Rule 2. Whatever may be that the petitioner cannot be an individual educational agency and cannot become the Manager either on the basis of Will or otherwise. Merely because Balakrishna Pillai during his life time without changing the ownership, nominated petitioner to act as manager, he will not become owner of the school or individual educational

agency and whether he can continue as the Manager or owner etc. can be decided finally in the appeal. Of course if the will is finally approved, eldest member will become automatically the Manager in view of the provisions in the will. That matter is to be considered in the A.F.A. Till the disposal of the final decree proceedings who will be the Manager is the question. Since the majority of the legal heirs of Gopalakrishna Pillai nominated Nataraja Pillai as the Manager, his appointment as Manager by Educational authorities by Exts.P4, P6 and P10 cannot be interfered by this Court in a petition under Article 226 of the Constitution of India. Being the eldest male member of the family, even under the alleged will relied on by the petitioner Nataraja Pillai eldest male member of family can be appointed as Manager and in any way petitioner cannot claim the right as he is not the eldest member of the family. We are of the view that 4th respondent Nataraja Pillai can act as the Manager and there is no infirmity in Ext.P4 as affirmed by Exts.P6 and P10. Even otherwise decision of the education authorities subject to final decision of the civil court passed after hearing both sides are not to be

lightly set aside by this Court. Of course, as stated in Exts.P4, P6 and P10 question of ownership, management etc. can finally be decided by the civil court and these orders are subject to the decision of the civil court.

5. Then the question is whether observations in Ext.P6 and P10 that Nataraja Pillai will become Manager from 24.3.2005 is correct or not. We are of the opinion that he can be appointed as manager only from the date of Ext.P4. During the Balakrishnan's time, petitioner was acting as the Manager. Balakrishna Pillai was allowed to continue as Manager till scheme is framed in the proceedings. In view of request by Balakrishna Pillai petitioner was appointed as Manager. Even if his appointment was not strictly legal, he was the defacto Manager till another Manager was appointed by Ext.P4. Necessarily the School must have a manager to appoint the staff, to carry on day to day administration etc. Nataraja Pillai has become Manager only with effect from Ext.P4. Exts.P6 and P10 are also effective from the date of Ext.P4 and appointments made prior to Ext.P4 cannot be

questioned by any of the parties because as it was done by undisputed defacto manager. For this preposition of law, we also refer to the decision in **Padmanabhan Nambiar v. Govt. of Kerala (1997 (2) KLT 725).** It was followed by another decision in **Manager, St.Mary's H.S. v. Beji Abraham (2002 (1) KLT 406).** We are not deciding the question whether will is valid or not as it is to be decided in the A.F.A. It is submitted that Ext.P10 was already implemented and Sri.Nataraja Pillai has taken charge as 'Manager' but complete records of the School were not handed over by the petitioner. The available records of the School in possession of the petitioner shall be handed over to the 4th respondent without delay. Writ Petition is disposed of accordingly.

J.B.KOSHY, JUDGE

M.N.KRISHNAN, JUDGE

prp

J.B.KOSHY & M.N.KRISHNAN, JJ.

M.F.A.NO. OF 2006 ()

J U D G M E N T

13th October, 2006